

UCCJEA ENACTED IN MARYLAND

New Uniform Law Refines Interstate Custody Jurisdiction



A new law will make it easier to determine which state has jurisdiction over custody cases involving more than one state, deter interstate parental kidnapping, and make custody orders easier to enforce across state lines. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) was enacted into law with the passage of House Bill 400 in the 2004 Maryland Legislative Session. The new law, which goes into effect October 1, 2004, was designed to correct problems with the current law, the Uniform Child Custody Jurisdiction Act (UCCJA).

The new law, now enacted by 21 other states, is a uniform state law that was endorsed in 1997 by the National Conference of Commissioners on Uniform State Laws to replace the UCCJA.

A Clearer, More Powerful Law

The UCCJEA will improve the ability of courts to handle interstate custody disputes. It makes it easier for judges who may not be as familiar with federal and international jurisdictional laws to interpret the law correctly, and will deter parents from removing children from the state solely to get the "upper hand" in custody litigation. When those children are inappropriately removed from the state, it makes it much easier to ensure that they are promptly returned.

Reconciling State Law with Federal and International Law

The new law was designed, in part, to reconcile state jurisdictional law in this area with federal and international law.

The current law provides four grounds for jurisdiction. A court is deemed to have jurisdiction if:

1. it is the child's home state;
2. the child has a significant connection with the state;
3. the child is present in the state and has been abandoned or there is an emergency necessitating the state's exercise of jurisdiction; or
4. it appears no other state has jurisdiction.

The Parental Kidnapping Prevention Act (PKPA), enacted by Congress in 1980, requires courts to emphasize the child's home state in determining jurisdiction. It also strengthened the ability of a state to modify its own order by providing for "continuing, exclusive jurisdiction." Because of these provisions, courts could not properly interpret state jurisdictional law without keeping in mind the effect of PKPA.

The new law reconciles state law to PKPA in these areas by emphasizing home state jurisdiction over the other grounds, and by providing the issuing state with "continuing, exclusive jurisdiction" until specific conditions are met.

The law also brings state jurisdictional law into closer harmony with the Violence Against Women Act (VAWA) and the Hague Convention on the

[cont. on p. 19](#)

inside

FCCIP Assessment	3
SALI	6
Recent Decisions	10
Federal Review Mixed	12
Upcoming Events	15

D-A-D-D-Y

Fathers Make a Difference

Pamela Cardullo Ortiz,
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Family Administration



Schoolyard rhymes have changed. In the 60s, when I was a kid, it seemed daring enough to insult the other gender (“Boys are made of greasy, grimy, gopher guts . . .”) or link your name with a boy (“A, my name is Alice, my husband’s name is Al . . .”). This suffices no longer. Recently I heard the following from two nine-year-old girls, one of them mine:

D-A-D-D-Y

You don’t even know that guy

Your Daddy, yeah yeah, your Daddy.

Upon questioning it appeared that neither girl realized exactly what that meant, or that it was really an insult aimed at “your mama.” Whoever wrote the cheer, however, knew exactly what they were talking about. When paternity challenges become the stuff of playground jibes, we know the world has changed.

The field of law and practice as it relates to paternity is also in transition. Until just a couple of years ago, you could still request a jury trial in a paternity case in Maryland. Paternity was a factual issue, but one that could not be pinpointed with accuracy and so required the subjective interpretation a jury could provide. Now, of course, genetic testing permits us to say with near perfect accuracy exactly who your daddy is.

While science is a marvelous thing, it still leaves many questions unanswered. Since genetic testing has become standard practice, our appellate courts have been left to tease out the subtler questions like:

When is it in the child’s best interest to determine paternity with certainty? When can a person who has been adjudicated the child’s father scientifically challenge that decision? And most recently, when is it proper for a court to rule on paternity and can that court then exclude a person who was once adjudicated “daddy” from CINA proceedings? (See *In re: Thomas H.* in “Recent Family Law Decisions,” on p. 10).

These questions matter because fathers are so important in the life of a child. Psychologists Janet Johnston and Vivienne Roseby, in their thoughtful book, *In the Name of the Child*, note that fathers play a critical role in a child’s healthy growth and development. In a two-parent, heterosexual family, fathers become a key transitional person—the first person a child builds a relationship with other than the mother, and the child’s first link to a larger world. A child who can establish a healthy, positive relationship with a father is ready to explore the larger world of social relationships. That child has more tools in his or her arsenal and is more likely to take risks and establish healthy social relationships with others as he or she grows older.

In a dual-parent household, fathers and mothers play distinct but complementary roles, both essential to the healthy development of the child. This analysis may not hold true for every family and every situation, but it does have implications for our family justice system.

cont. on p. 19

family matters

We welcome your comments and contributions.

Please call or write: Pamela Cardullo Ortiz, Exec. Director

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FCCIP Assessment Completed by ABA

A recent evaluation report promises to reinvigorate Maryland's efforts to improve the court's role in child protection cases. After taking an in-depth look at the Foster Care Court Improvement Project (FCCIP) over several months, the American Bar Association (ABA) Center on Children and the Law has praised the project for its success since its last assessment in 1997 and offered suggestions for further improvements.

"The Maryland FCCIP has achieved many great successes and has provided training, support and assistance to all of the key players in the child welfare system throughout Maryland," the ABA report concluded. The evaluation reveals that most of the recommendations from the 1997 report have been achieved, and it makes recommendations for future refinements.

The initial assessment report from 1997, *Improving Court Performance for Abused and Neglected Children*, had made 37 recommendations to improve the performance of the juvenile court in the handling of Child in Need of Assistance (CINA), Termination of Parental Rights (TPR) and adoption cases. The FCCIP Implementation Committee and its subcommittees have worked for over seven years to implement these recommendations.

Background and Methodology

The ABA Center on Children and the Law began its work in January 2003, after the center was awarded a contract to conduct the evaluation in December 2002. ABA staff examined the work of

the FCCIP in several areas such as statutory changes, case management and statistical information, representation of parties, educational materials and programs and implementation. For each of the areas covered by the 1997 report, the center both qualitatively and quantitatively analyzed the FCCIP's efforts to improve performance.

The three main components of the study were:

1. Surveys of juvenile judges and masters, administrative judges, juvenile court clerks, agency attorneys, parents' attorneys and children's attorneys in every county;
2. Site visits, interviews, court observations and case file reviews in Baltimore City, Charles, Montgomery, Somerset and Washington counties; and
3. An analysis of court statistical systems.

The evaluation was completed in June 2004. After concluding that significant progress had been made to advance its original objectives, the ABA recommended that the FCCIP take these further steps to improve the court's role in child protection cases:

- Continue training for the Judiciary and attorneys around the new (2001) CINA statute;
- Develop minimum uniform standards of properly conducted hearings;
- Conduct multi-disciplinary training on the model court orders;
- Draft statute defining the role of judges and masters in juvenile matters;
- Draft statute that codifies uniform and minimum standards of representation for parents and agency attorneys;
- Continue improving the collection of basic and more detailed case statistics. Improve the current system or implement a new system to ensure reliability and accuracy;

cont. on p. 7



Two Truancy Initiatives Planned

Maryland is developing two initiatives to address the issue of children who do not attend school regularly. One initiative creates new legal options schools can pursue and allows for the creation of a truancy docket within the circuit court. The other is a school-based program that will involve judges who volunteer their time to conduct informal hearings on truancy issues at a school-run truancy center.

A Court-Based Program on the Eastern Shore

Wicomico County Circuit Court will develop the first pilot site for a Truancy Reduction Pilot program. The program was authorized under House Bill 1443, which was passed by the Maryland State Legislature during the 2004 legislative session.

The program is mirrored, in part, after Delaware's successful truancy court, which has been in operation for several years as part of that state's Justice of the Peace Court. Like the proposed Maryland pilot program, the Delaware truancy court hears criminal misdemeanors filed against parents and civil petitions filed against children for failure to attend school. Hearings are scheduled regularly so the court can monitor the child's school attendance and compliance with orders.

Wicomico County pupil personnel workers will file petitions and appear before the county's circuit court for hearings in one of two types of cases. Currently, a parent who permits a child to unlawfully miss school can be found guilty of a criminal misdemeanor. Although those cases have generally been filed in District Court, circuit courts share concurrent jurisdiction over criminal matters filed under the Education Article of the Maryland Code. In this pilot program, cases will be filed in juvenile court and assigned to a truancy docket. The new law also creates a civil charge that can be filed against a child for failure to attend school. The new charge is neither a delinquency action nor a Child in Need of Assistance action. It represents a new way to address the needs of chil-

dren whose parents have been unable to keep them at school and who may need additional guidance to keep them from going too far afield.

If a child is charged civilly and the allegations proven, the court may order the child to attend school, perform community service, attend individual or family counseling, participate in substance abuse evaluations and treatment, undergo a mental health evaluation and keep a curfew.

The Circuit Court for Wicomico County, in conjunction with First Circuit Administrative Judge Daniel Long, will be meeting with the Wicomico County Board of Education to plan for the implementation of the Truancy Reduction Pilot program. Participants hope to begin hearing cases by January 2005.

A School-Based Program in Baltimore City

A second initiative will establish a voluntary, school-based program for students in Baltimore City. The University of Baltimore School of Law's Center for Families, Children and the Courts (CFCC) recently received funding from the Charles Crane Family Foundation to help develop and implement a truancy program in two elementary schools and two middle schools in Baltimore City.

The program is still under development, but its planners expect it to feature informal hearings where volunteer judges help address the needs of truant children and their families.

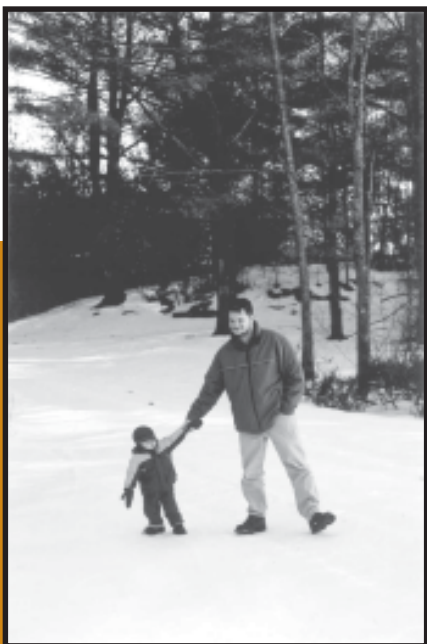
An initial meeting on June 15 involved representatives of the Baltimore City school system, the State's Attorney's Office, the Office of the Public Defender, the Family League of Baltimore, the Mayor's Office, the Administrative Office of the Courts, the Circuit Court for Baltimore City, the Department of Juvenile Services, the Baltimore City Police Department and CFCC staff. Participants began developing a protocol to coordinate the activities and efforts of the various agencies and organizations involved in addressing truancy.



By Anne Turner, Family Support Services Coord.,
Circuit Court for Worcester Co.

Worcester County's Nurturing Fathers Program

GOOD FOR DADS, GOOD FOR KIDS



A new county-wide program in Worcester County supports fathers as they seek to play an important role in their children's lives. The Nurturing Fathers Program is a 10-week curriculum created to cultivate and support the attitudes and skills for male nurturance, hoping to benefit men, women and children in family relationships.

The program, initiated by the Circuit Court for Worcester County and the Worcester County Health Department, implements a successful program model developed by Mark Perlman, a Florida practitioner and mediator.

The Nurturing Fathers Program focuses not only on re-engaging fathers with their children but believes that it is the quality of the father's presence that matters most in enhancing the lives of his children, himself and other family members.

Research supports the benefits that children and families gain through active father involvement. Evidence points to the absence of the father as a major factor in the increase of delinquency and violence in our culture. Studies have shown that more than 70 percent of long-term inmates come from fatherless homes.



Single mothers may use a father's failure to pay child support as a reason to deny them access to their children. In turn, fathers who are not being given access to their children or feel that they do not have a close relationship with their children are less likely to pay child support. This pattern may result in a loss of contact between the father and his children and an increased probability that child support arrearages will accrue. Original funding came from a grant from the Child Support Incentive Fund Committee of the Conference of Circuit Court Clerks.

Although all fathers are encouraged and welcomed to attend the Nurturing Fathers Program, the Circuit Court for Worcester County is referring those noncustodial fathers who have either child support or custody/visitation cases pending. The program is offered throughout the year in Berlin, Snow Hill, Pocomoke and at the Worcester County Jail on a rotating basis.

To learn more about the Nurturing Fathers Program, contact Dave Baker, program director, at 410/632-0056.

SALI: A New Legal Resource for Survivors of Sexual Assault

By Lisae C. Jordan, Esq., Director, SALI

Filling a gap in services for sexual assault victims and survivors, the Maryland Coalition Against Sexual Assault is offering a new legal resource. SALI, the Sexual Assault Legal Institute, provides legal representation, advice and referrals to victims, and training and technical assistance for professionals—including judicial personnel. Prior to its formation, victims/survivors of sexual assault who did not qualify for domestic violence services had few, if any, legal resources available.

A typical case involved “Li,”* a young college student who lived in a small immigrant community. Like many in her community, she spoke an Asian language and had difficulty communicating in English. Another student befriended Li and helped her navigate a trip to the motor vehicles department. Li believed the student was a friend and was shocked when he sexually assaulted her. She reported the case to the police, who began an investigation.

Li was referred to both the Legal Aid Bureau and the House of Ruth, but neither could help her because she was not a victim of domestic violence. Li became one of SALI's first clients. She was represented in a successful peace order hearing and received help as her case made its way through the criminal justice process.



While peace orders and protective orders are some of the most common legal needs of victims/survivors of sexual assault, a wide range of legal issues have been presented to SALI. These range from helping a rape victim with post-traumatic stress disorder take time off under the Family Medical Leave Act to representing rape victims who have become pregnant. Clients come from all different backgrounds, although many are college students seeking help after being assaulted by other students.

SALI encourages referrals for the following:

- College administrative hearings
- Privacy issues
- Peace and protective orders
- Family law matters (intimate partner assault)
- Employment
- Housing
- Crime Victims Compensation
- Referrals for tort cases
- Any other civil matter relating to sexual assault

SALI does not have formal income guidelines. However, a victim's ability to hire private counsel is factored into the decision about whether to take a case. The program, which operates statewide, has handled cases in jurisdictions ranging from Garrett to Carroll to Prince George's counties.

SALI does have some limits on the types of cases it may accept. Currently, the program cannot provide direct services in child sexual abuse cases. However, with the support of the Administrative Office of the Courts, the Maryland Coalition Against Sexual Assault is developing written materials about child sexual abuse for parents and attorneys. Additionally, SALI can provide assistance in criminal cases only if also providing civil legal services.

SALI also provides training for rape recovery and crisis centers and others working with sexual assault providers. Within the legal community, SALI is in the process of creating a “low bono” network of attorneys who have training and sensitivity to work effectively with victims. This network is modeled after the Maryland Legal Services Corporation's Custody Project, and provides private lawyers with \$50 per hour, generally capped at \$1,000. Attorneys also receive mentoring and technical assistance.

The Sexual Assault Legal Institute can be reached at 301/565-2277. For information about training or the low bono network, ask for SALI's director, Lisae C. Jordan.

* Names and identifying facts have been changed to protect privacy.

FCCIP Assessment, cont. from p. 3



- Conduct comprehensive systems audit of a sample of cases and re-train based on results;
- Revise monthly reports generated to contain useful information;
- Explore the use of case segments as a means of tracking progress;
- Expand the use of Differentiated Case Management;
- Modify shelter care authorization forms to provide contact information and inform parents of their right to counsel;
- Establish or update a reduced fee panel for parent representation;
- Encourage one attorney, one case;
- Study, evaluate and develop a system for judicial input in the selection of attorneys;
- Conduct an evaluation to determine the appropriate caseload maximums for all attorneys, including agency and parents' attorneys;
- Follow up to ensure that the two-week training program and mentoring system for the Judiciary is being implemented statewide;
- Provide mandatory continuing education for judges and masters who hear child welfare cases including ramifications for failure to attend;
- Explore using different training modalities including online tutorials, video satellite conferences and telephone conferences;
- Update judicial benchbook;
- Provide a mandatory training program for all new attorneys and continuing education for all attorneys who practice child welfare law;
- Develop a legal manual for caseworkers; and
- Provide continued training for clerks on processing cases and other topics.

The report's recommendations will be systematically incorporated into the work of the FCCIP Implementation Committee and its subcommittees. The FCCIP is committed to improving the lives of Maryland's most vulnerable children by improving the juvenile courts' handling of child abuse and neglect cases. To obtain the complete text of the evaluation, see:

www.courts.state.md.us/family/index.html

A Brief Summary of Family Bills that Became Law

The following is a brief summary of family law bills that were passed by the General Assembly and became law at the conclusion of the 2004 Legislative Session. This list is not exhaustive. You can obtain detailed information on these and other bills and the complete text of each bill at: www.mlis.state.md.us/#bill.

Adoption

SB 477 - Medically Fragile Children - Study

Requires the Governor's Office for Individuals with Disabilities to study the placement of medically fragile children in Maryland to determine, *inter alia*, the number of medically fragile children in out-of-home care, the number who have been adopted, and the number of families willing to adopt medically fragile children if ongoing support were available beyond the child's 21st birthday, and the cost of providing such support. Effective July 1, 2004.



HB 211 - Family Law - Adoption - Certificates of Birth

Repeals current law making the entry of an adoption order by a court grounds for the Secretary of the Department of Health and Mental Hygiene (DHMH) to make a new birth certificate for an individual who was born outside the US; repeals requirement that a foreign-born adopted person must obtain an order of adoption from a Maryland court before the secretary may prepare and register a certificate of foreign birth. [It will no longer be necessary to get a MD court order to obtain a MD birth certificate for a child adopted outside the U.S., as long as the child has an IR-3 visa.] Effective October 1, 2004.

Child Support

SB 38 - Family Law - Child Support Enforcement - Earnings Withholding and Medical Support Notices

Repeals the requirement that the Child Support Enforcement Administration (CSEA) send obligors and employers certain copies of Earnings Withholding Orders and Medical Support Notices by certified mail, return receipt requested. Those documents can now be sent by first class mail. Obligor must be notified at their last known home address *and* place of employment. Makes changes to other related notification requirements. Effective June 1, 2004.

SB 328 - Family Law - Child Support Guidelines

Revises the child support guideline schedule. Changes the "self-sufficiency reserve" in guideline calculations, thereby lowering child support payments for those whose combined income is \$850 per month or lower. Specifies that revision of the guidelines would not be grounds for requesting a modification unless it would result in a change in the award of 25% or more. Effective July 1, 2004.

SB 928 - Family Law - Child Support Guidelines - Third Party Payments

Alters the definition of "actual income" for the obligor under the child support guidelines to include any third party payment paid to or for a minor child as a result of the obligor's disability, retirement or other compensable claim. Requires that such third party payments paid to or for a child be set off against the child support obligation calculated using the guidelines.

If those payments exceed the current child support obligation, they are to be credited toward any child support arrearage that accrued after the effective date the benefits were awarded. Provides that the adoption or revision of the guidelines may not be grounds for a modification unless it would result in a change in the award of 25% or more. Effective October 1, 2004.

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HB 605 - Child Support - Driver's License Suspension - Grounds for Requesting an Investigation and Appealing

Provides grounds upon which an obligor may request an investigation and appeal the proposed action of CSEA to send a notice to the Motor Vehicle Administration (MVA) that an obligor is out of compliance with a child support order. Makes it discretionary rather than mandatory for the CSEA to send a notice to the MVA. Effective October 1, 2004.

CINA/TPR

SB 99 - Residential Child Care Programs - Certification of Program Administrator

Establishes State Board for Certification of Residential Child Care Program Administrators and fund. Requires individuals to be certified before administering a residential child care program. Specifies other requirements for residential child care programs. *Effective October 1, 2004.*

SB 285 - Child in Need of Assistance – Permanency Planning Hearings

Requires permanency planning hearings for all voluntary placement cases every 6 months until case is terminated. Also modified language to make the Adoptions and Safe Families Act (ASFA) requirement more explicit that courts make a “reasonable efforts” finding in all permanency planning hearings. Emergency measure effective upon enactment. Effective April 13, 2004.

SB 711 - Child Welfare Services - Children in Out-of-Home Placement

Requires the Department of Social Services (DSS) to consider certain criteria in developing a permanency plan for a child in an out-of-home placement. Requires the Special Secretary for Children, Youth & Families, in consultation

with other agencies, to conduct a study of out-of-home placements to determine the number and types of out-of-home placements that would be required in each jurisdiction to accommodate children in their home county. Effective October 1, 2004.

HB 1146 - Juvenile Causes - Children in Out-of-Home Placement - Plan for a System of Outcomes Evaluation

Requires the Department of Juvenile Services (DJS), the Department of Human Resources, et. al., to plan and determine the cost of testing and implementing a systematic method of evaluating out-of-home placements and outcomes for children. Effective June 1, 2004.

Custody

HB 400 - Maryland Uniform Child Custody Jurisdiction and Enforcement Act

Maryland Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a revised model statute designed to replace existing law, the Uniform Child Custody Jurisdiction Act (UCCJA), which governs jurisdiction of interstate custody matters. Intended to reduce conflicts and problems caused by interstate custody and visitation disputes, and help improve the enforcement of valid court orders. Reconciles state jurisdictional law with federal statutes including the Parental Kidnapping Prevention Act (PKPA) and the Violence Against Women Act (VAWA). Simplifies enforcement provisions. Emphasizes “continuing exclusive jurisdiction.” Governs how state courts are to communicate with one another. Effective October 1, 2004.

Divorce

SB 418 - Family Law - Property Disposition - Transfer of Family Use Personal Property

Gives the court in a divorce the authority to transfer ownership of family use personal property from one party to another or both. Defines “family use personal property” to mean tangible personal property acquired during the marriage, owned by one or both of the parties, and used primarily for family purposes. It can include motor vehicles, furniture, furnishings and household appliances. Effective October 1, 2004.

[cont. on p. 16](#)



Recent Family Law Decisions

Family Matters highlights reported decisions of the Maryland Court of Appeals and Court of Special Appeals that address family law issues. Copies of reported opinions are available online at <http://www.courts.state.md.us/opinions.html>.

COURT OF APPEALS

CINA / Paternity

In re: Thomas H., No. 92, September Term 2003, filed May 10, 2003. Opinion by Wilner, J.

Father was not entitled to appeal whether the court erred by concluding that the appellant was not the father of the child prior to finding the child CINA, where although the father filed an appeal immediately after the paternity ruling, he did not perfect it. He then did not appeal the final order in the case, thereby effectively abandoning his earlier appeal.

In dicta the court indicated that had they been able to reach the issue they would have found that the trial court erred. The lower court had no authority to determine that the appellant, who had previously been adjudicated the father of the child, was not the father and was not a proper party to the proceeding. Appeal dismissed. The court was also in error by ruling on paternity before adjudicating the child a CINA.

Contempt

Dodson v. Dodson, No. 63, September Term, 2002, filed April 5, 2004. Opinion by Eldridge, J., *retired*.

A court may not award compensatory damages, based upon the alleged negligent failure to comply with a court order, in a civil contempt action.

"The purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt." Civil contempt must allow for a purge. In this matter, the husband was required by a *pendente lite* order in a divorce case, to pay for the insurance on the condominium where the mother resided with the children. He did not receive a bill for payment since he had moved, and, as a

result the payment was not made and the policy lapsed. A fire damaged the home shortly thereafter. Mother sought \$25,000 in uncompensated damages for the contents of the condominium. The trial court's purpose in awarding compensatory damages was not to coerce appellant's present or future compliance with the order, nor did it include a purge, and it was generally inconsistent with civil contempt.

Domestic Violence

Triggs v. State of Maryland, No. 118, Sept. Term 2003, filed June 16, 2004. Opinion by Battaglia, J.

When a protective order requires an abuser to have "no contact" with a victim, repeated calls constitute separate acts for the purposes of the sentencing provisions requiring penalties "for each offence" in Section 4-509 of the Family Law Article.

Petitioner left 32 messages on ex-wife's phone within a three-day period; phone records reflected that he actually made over 50 calls to her during that period, many of which contained threats to kill their children if she did not respond. Following a jury trial, petitioner was convicted of, among other things, 18 counts of violating a protective order. He was given 18 consecutive one-year sentences. Judgment affirmed.

Name Change

Dorsey v. Tarpley, No. 95, September Term 2003, filed May 6, 2004. Opinion by Harrell, J.

Trial court erred in granting a name change over appellant mother's objection. The case is neither a "no initial name case," nor a "change of name" case as the parents disagree as to whether there was an agreement prior to the birth as to what to name the minor child, and where the trial court made no factual finding and no record regarding whether there was, in fact, an agreement.

The case is vacated and remanded to determine if there was an agreement. If there was an agreement, the appellee father must satisfy, by admissible evidence, the "extreme circumstances" standard in order to generate a *prima facie* case for the name change he seeks. If there was no agreement, then

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the father must demonstrate that the desired name change is in the child's best interest pursuant to *Lassiter-Geers v. Reichenbach*, 303 Md. 88, 492 A.2d 303 (1985).

COURT OF SPECIAL APPEALS

Child Custody

Flynn v. May, No. 1719, September Term 2003, filed June 30, 2004. Opinion by Moylan, J.

The award of a change of custody by default, without a hearing on the merits, constituted an abuse of discretion where the appellant, mother, had attempted to file a written response to father's complaint for modification of custody, but it had been returned by the court as insufficient.

At a hearing, the court refused to permit the mother or any of her witnesses to testify, due to the Order of Default. The father's request for custody was granted without any testimony concerning the fitness of the parents or the needs of the child. The Court of Special Appeals did not go so far as to hold that the default judgment procedure of Maryland Rule 2-613 is categorically inapplicable to child custody disputes, but in strong dicta noted that "it is impossible for us to conjure up a hypothetical in which a judgment by default might ever be properly entered in a case of disputed child custody."

Divorce

Cannon v. Cannon, No. 295, September Term, 2003, filed April 15, 2004. Opinion by Davis, J.

The prenuptial agreement executed by the parties before their marriage to keep the wife's bankruptcy creditors from seizing her husband's assets was valid and enforceable.

The trial court erred in setting aside the prenuptial agreement on appellee's assertion that she believed the agreement would expire after the bankruptcy proceedings had concluded where there was no evidence that there had been an agreement to that effect. Furthermore, there was no evidence to suggest that there had been some dependence by the appellee on the appellant. Her choice not to

seek legal counsel had been her own, without undue influence by the appellant. Judgment reversed.

Child Support

Tucker v. Tucker, No. 501, September Term, 2003, filed April 16, 2004. Opinion by Krauser, J.

The trial court erred in including Social Security payments made to the minor children as a result of the appellant father's age and retirement in the mother's income when calculating child support.

Social security income is "income to the children," not to the custodial parent, as stated in *Anderson v. Anderson*, 117 Md. App. 474 (1997), vacated on other grounds, 349 Md. 294 (1998).

When the case falls within the child support guidelines, those guidelines "do not provide for the automatic application of Social Security benefits directly against the obligor's support obligation." *Goshorn v. Goshorn*, 154 Md. App. 194, 220 (2003). The same generally applies to above-guidelines cases, though the court may, in exercising its discretion, adjust the parties' total support obligation by reducing it in some measure to reflect the Social Security benefits the children are receiving. Judgment vacated and remanded.

NB: Senate Bill 928, passed during the 2004 Legislative Session and taking effect October 1, 2004, alters the definition of "actual income" for the obligor to include, certain third party payments to/for a minor, and requires certain third payments to/for a child to be set off against the child support obligations under the guidelines.

Divorce / Child Custody

Roddy-Duncan v. Duncan, No. 0416, Sept. Term, 2003, filed June 2, 2004. Opinion by Moylan, J.

Trial court erred in not conducting a hearing on appellant wife's motion to vacate a default judgment granting a divorce, custody and child support to husband where there were questions the court had jurisdiction, there were related pending cases in a neighboring state, the wife never appeared for a hearing or answered the complaint, and there appeared to be question as to whether or not she had been properly served.

Mixed Findings for Child Welfare System

After receiving results of a federal review of the state's child welfare system, Maryland is working to develop a plan to improve the system. The federally required assessment, the Child and Family Services Review (CSFR), identified many areas for improvement, while also recognizing strengths in the state's child welfare system – such as training, the agency's responsiveness to the community, and recruitment and retention of adoptive and foster parents.

The review was a joint effort between the U.S. Administration for Children and Families (ACF), the U.S. Department of Health and Human Services and the Maryland Department of Human Resources (DHR). Maryland was one of the last states to participate in the federally-required assessment. Maryland received the final report of the state's performance on the Child and Family Services Review (CSFR) from the ACF in June.

The Review Process

With DHR serving as the lead agency, reviewers examined the state's practices in child protective services, foster care, adoption, family preservation, family support and independent living programs. The review process involved several stages:

1. statewide assessment;
2. onsite review; and
3. development by the state of a program improvement plan (PIP).

Data submitted by the state was examined to determine compliance with federal laws and regulations. The second stage, the onsite review, took place in November 2003. Federal evaluators conducted a review of randomly selected cases from Allegany County, Anne Arundel County and Baltimore City.

Although the process evaluated the entire state, only those sites were subjected to an onsite review. The final report, delivered in June, initiated the third stage of the review process. DHR and various stakeholders, including the courts, are now working together to develop a PIP, which must be submitted by September 2004.

Goals of the Review

The process was designed to highlight both strengths and weaknesses in states' child welfare practices, and to act as an impetus for states to address areas needing improvement. The final report assessed Maryland's conformity with: (1) seven outcomes for children and families in the areas of safety, permanency and well-being; and (2) seven systemic areas identified as mechanisms a state needs to achieve positive outcomes and to support the child welfare system. The systemic areas reviewed were the state's information system, case review system, quality assurance system, staff training, service array, responsiveness to the community, and foster parent/adoptive parent recruitment and retention. For each outcome and systemic factor there are several measures that shaped the state's performance in a particular outcome or systemic area. The review encompassed 45 of these measures.

[cont. on page 14](#)

Maryland CFSR System Items Rated as Strengths and Those Needing Improvement

Strengths	Areas Needing Improvement
<ul style="list-style-type: none">• Process for 6 month case reviews• Standards to ensure quality services and ensure children's safety and health• Provision of initial staff training• Provision of ongoing staff training that addresses the necessary skills and knowledge• Provision of training for caregivers and adoptive parents• Ability to individualize services to meet unique needs• Engages in ongoing consultation with critical stakeholders• Coordinates services with other Federal programs• Standards for foster family and child care institutions• Standards are applied equally to all foster family and child care institutions• Conducts necessary criminal background checks• Diligent recruitment of foster and adoptive families that reflect children's racial and ethnic diversity	<ul style="list-style-type: none">• System can identify the status, demographic characteristics, location and goals of children in foster care.• Process for developing a case plan and joint planning with parents• Process for 12 month permanency hearings• Process for seeking TPR in accordance with ASFA• Process for notifying caregivers of review hearings and for opportunity for them to be heard• Identifiable quality assurance system that evaluates the quality of services and improvements• Availability of array of critical services• Accessibility of services across all jurisdictions• Uses cross-jurisdictional resources to find placements

Maryland CFSR Ratings for Safety and Permanency Outcomes and Items

Outcomes and Indicators		Outcome Ratings			Item Ratings		
		In Substantial Conformity?	Percent Substantially Achieved*	Met National Standards?	Rating**	Percent Strength	Met National Standards
Safety Outcome 1 -Children are first and foremost, protected from abuse and neglect		No	87.2	One met, one not met			
Item 1: Timeliness of investigations					Strength	88	
Item 2: Repeat Maltreatment					ANI	87	No
Safety Outcome 2 -Children are safely maintained in their homes when possible and appropriate		No	81.3				
Item 3: Services to prevent removal					ANI	83	
Item 4: Risk of harm					ANI	84	
Permanency Outcome 1 -Children have permanency and stability in their living situations		No	26.7	Two met, two not met			
Item 5: Foster care re-entry					ANI	71	Yes
Item 6: Stability of foster care placements					ANI	79	Yes
Item 7: Permanency goal for child					ANI	34	
Item 8: Reunification, guardianship and placement with relatives					ANI	38	No
Item 9: Adoption					ANI	42	No
Item 10: Other planned living arrangement					ANI	56	
Permanency Outcome 2 -The continuity of family relationships and connections is preserved		No	64.3				
Item 11: Proximity of placement					Strength	96	
Item 12: Placement with siblings					ANI	71	
Item 13: Visiting with parents and siblings in foster care					ANI	67	
Item 14: Preserving connections					ANI	71	
Item 15: Relative placement					ANI	72	
Item 16: Relationship of child in care with parents					ANI	64	

*90 percent of the applicable cases reviewed must be rated as having substantially achieved the outcome for the State to be in substantial conformity with the outcome.

** Items may be rated as a Strength or an Area Needing Improvement (ANI)

Chart provided by Pamela Evans, Baltimore City DSS

Committee on Family Law Update

The Committee on Family Law held its final meeting of Fiscal Year 2004 on April 26. At that meeting, subcommittee reports were given and plans were made for how best to vet two documents requiring the committee's input: "Best Practices for Programs to Assist Self-Represented Litigants" and "Family Court ADR Program Best Practices." Plans were made to have small groups vet the documents so the full committee could receive their input in September.

Child Support Subcommittee

The Child Support Subcommittee continues to work on developing program profiles of jurisdictions that make use of criminal contempt in some way. The subcommittee is also considering hosting a training session on the subject.

Custody Subcommittee

The Custody Subcommittee met in May to continue drafting a set of guidelines or standards for attorneys appointed to represent children in custody cases. Topics discussed and drafted included training, qualifications and compensation for child counsel. In September, the subcommittee will resume meeting to take up issues including immunity and liability of child counsel.

Domestic Violence Subcommittee

The Domestic Violence Subcommittee met in April and May. At the April meeting, Carol B. Doctrow, research associate for the Attorney General's and Lt. Governor's Family Violence Council,

gave a presentation on the use of abuser intervention treatment programs. They also reviewed proposed changes to the temporary and final protective orders. During the May meeting, the subcommittee discussed a suggestion to provide predisposition educational programs to defendants who are charged with domestic violence-related crimes. This could permit the court to reach individuals who may be potential abusers, but who will not be ordered to receive some type of treatment because they are not convicted. The subcommittee was informed that the District Court uses a video, "The Paper Chase," to train court staff on handling protective order and peace order cases. The subcommittee also discussed a proposal to eliminate the temporary protective order hearing when an interim protective order has been granted. It was acknowledged that this would require a legislative change. The committee plans to discuss the issue further.

Juvenile Subcommittee

Plans have been finalized by the subcommittee on the agenda for the "Delinquency Day" of the Child Abuse Neglect and Delinquency Options (CAN DO) Conference to be held October 4-6 in St. Michael's, MD. The subcommittee was successful in obtaining a technical assistance grant from the Center for Sex Offender Management to bring in a speaker for that event.



Mixed Findings, cont. from p. 12

Results

Maryland was found "not to be in substantial conformity" with the seven child welfare outcomes and four of the systemic factors. However, Maryland was found "to be in substantial conformity" with the three systemic factors of training, agency responsiveness to the community, and foster parent/adoptive parent recruitment and retention. States must demonstrate a 90 percent compliance rate to achieve substantial conformity with each outcome and factor. No state has met the 90 percent compliance rate in all of the outcome and systemic factor areas at one time. As illustrated in the previous charts, although Maryland did not meet the 90 percent compliance rate in all the outcome areas, there were several areas identified as strengths and areas where the state reached at least an 80 percent or higher compliance rate.



time flies ...

mark your calendar

September 7-10, 2004	Representing Children, Families & Agencies: 27 th Annual Children's Law Conference National Association for Child Counsel Las Vegas, NV	www.NACCchildlaw.org
September 17, 2004	3 rd Annual Court's Mid-Shore Conference Exploring Mental Health and ADR Solutions Chesapeake College, Wye Mills, MD	Shelly Coleman (410)758-1773
September 29- October 2, 2004	Valuing Peace in the 21 st Century: Expanding the Art and Practice of Conflict Resolution Association for Conflict Resolution Conference Sacramento, CA	ACR, 202/464-9700
October 3-6, 2004	Mid-Atlantic Association for Court Management Annual Conference, Dover, DE	www.maacm.org
October 4-6, 2004	7 th Annual Child Abuse, Neglect & Delinquency Options Conference, Columbia and St. Michaels, MD	Tracy Watkins-Tribbitt (410)260-1272
October 14-16, 2004	6 th International Symposium on Child Custody Evaluations, Association of Family and Conciliation Courts, Nashville, TN	AFCC (608)664-3750
October 17-18, 2004	6 th International Symposium on Parent Education and Access Programs, Association of Family and Conciliation Courts, Nashville, TN	AFCC (608)664-3750
October 27-29, 2004	Maryland Joint Child Support Conference Ocean City, MD	Jenn Keiser (410)260-1580
November 12, 2004	Building Bridges: Connecting Communities Sexual Assault/Domestic Violence Conf. 2004 Turf Valley Conference Ctr., Ellicott City, MD	MCASA (410)974-4507
December 3, 2004	2 nd Maryland Mediators Convention University of Maryland Convention Center College Park, MD	MACRO (410)841-2260

The Session in Review, cont. from p. 9

Domestic Violence

HB 1148 - Domestic Violence - Protective Order - Penalty

Current law provides a criminal penalty for failure to comply with certain provisions of final protective orders. This bill adds to these provisions the failure to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the final protective order as ordered in accordance with Family Law 4-506(d)(12). Effective October 1, 2004.

Juvenile

SB 163 - Juvenile Law - Waiver of Counsel

Prohibits a child from waiving right to counsel unless the child is in the presence of counsel, and has consulted with counsel, and the court determines that the waiver is knowing and voluntary. Provides factors court shall consider in determining if the waiver is knowing and voluntary. Prohibits parents, guardians or custodians of the child from waiving the child's right to counsel. Requires the Office of the Public Defender (OPD), after its entry of appearance, to verify eligibility for continued OPD representation. Establishes that continuance of a waiver or adjudicatory hearing may not be a basis for detaining the child. Effective October 1, 2004.

SB 543 - Department of Juvenile Services - Facilities and Reform Progress Reporting

Limits the contract term for any private vendor engaged to provide juvenile services at the Charles H. Hickey, Jr. School to a maximum of three years. Requires DJS to submit a facilities master plan, feasibility study of community-based services that will effectively serve as alternatives to secure detention, development of after-care plans and to develop certain regulations. Emergency Bill effective upon enactment. Effective May 26, 2004.

SB 767 - Juvenile Services - Step-Down Aftercare

Requires child discharged from committed residential placement to get "step-down" aftercare to be provided by the DJS.

"Step-down aftercare" is defined as:

1. a network of programs providing education and rehabilitation; and
2. services and treatment to ease the transition of children from the custody of the department to their homes and communities. Effective October 1, 2004.

HB 1139 - Department of Juvenile Services and Department of Education - Enhancement of Programs

Establishes an Education Program within DJS. Establishes a Juvenile Services Education Program in the Department of Education. Requires all DJS facilities to provide year-round educational programs to be operated by the State Department of Education. Requires DJS and the State Department of Education to cooperate in providing for the educational needs of youth in DJS facilities. Effective June 1, 2004.

HB 1443 - Juvenile Causes - Truancy Reduction Pilot Program

Authorizes the creation of a truancy pilot program in the First Circuit. Creates a civil charge that can be brought against a minor child for failure to attend school. Bill was contingent upon funding. Funding has been provided to establish a truancy court in Wicomico County only in Fiscal Year 2005. Effective July 1, 2004.

Other Family Law Bills

HB 209 - Vital Statistics Administration - Adjudications of Paternity - Repeal Requirement for Fee

Repeals requirement that DHMH collect a fee to process adjudications of paternity. Effective October 1, 2004.

HB 746 - Marriage Ceremonies - Officials - Fees

Clarifies which judges can conduct marriage ceremonies (those sitting or retired but eligible for recall), and specifying fees for ceremonies conducted by judges, and that the fee goes to the clerk's office. Effective July 1, 2004.

Around Maryland

Baltimore County

Baltimore County Circuit Court Family Division has begun a program to mediate contempt petitions with child access issues. Using volunteer attorneys, the family division plans to expand this program in October to mediate contempt petitions with financial issues.

Dorchester

Dorchester County Circuit Court is in the final planning stages for their Juvenile Drug Court. The first full day of the program was scheduled for July 28th.

Kent

Kent County Circuit Court Family Services Program now provides a series of court services fact sheets with the information in both English and Spanish.

Worcester

The Family Services Division in Worcester County Circuit Court conducted presentations for all staff in the clerk's office, teaching them about the roles, responsibilities and services of the family program. Another training session, "Court Ordered Home Studies," was conducted for the child welfare staff at the Worcester County Department of Social Services.



Recent Family Law Decisions, cont. from p. 11

The decision as to whether to conduct a hearing on a motion such as this is entrusted to the discretion of the trial court. In this case there were at least two "red flags" that should have caused the court to make further inquiry—the validity of service and pending cases in another state, about which the Maryland court may have been provided only selected information by the husband.

Termination of Parental Rights

In re: Adoption/Guardianship of Victor A., No. 1535, September Term, 2003, filed July 1, 2004. Opinion by Adkins, J.

The trial court erred when it terminated parental rights for a severely-disabled child without determining whether continuation of those rights would harm the child's prospects for adoption. The court also erred when it failed to explain its mixed conclusion

of fact and law that termination was in the child's best interest. "[The appellate court] cannot approve boilerplate statements that merely repeat the best interest standard. The specific reasons for the court's best interest determination must be explained on the record, in a manner that permits appellate review."

The disabled child was in a therapeutic foster home with a foster parent who planned to retire in a few years; he appeared to recognize and react to his parents during visits. The child's mother had a history of substance abuse; the father had failed to find appropriate housing and seemed incapable of meeting his medical needs. Judgment vacated and remanded to Circuit Court. On remand the local department of social services must consider whether this is one of the rare cases in which a foster care permanency plan is in the child's best interest.

Foster Care Court Improvement Project

(FCCIP) Update



Foster Care Court Improvement Project staff have been active in reviewing the Child and Family Services (CFSR) final report that was released in June. Members of the FCCIP, as well as other judges and masters throughout the state, received the report and were asked to provide feedback in order to develop the program improvement plan (PIP). A more detailed discussion of the findings of the CFSR and the plan is found in the article on page 12.

A summary of the FCCIP evaluation that was conducted by the American Bar Association (ABA) Center on Children and the Law can be found on page 2. The FCCIP is in the process of consolidating the findings from CFSR and its evaluation as it plans for the reassessment required by the Department of Health and Human Services by June 2005.

CINA Subcommittee

The Child in Need of Assistance (CINA) Subcommittee convened two open meetings inviting various stakeholders to supply final comments on the Termination of Parental Rights (TPR) and adoption legislation. The first meeting focused on private guardianship and adoption cases and inde-

pendent adoption cases. People and organizations representing birth parents, private agencies and others involved in these non-Department of Social Services (DSS) cases attended. Local DSS directors, staff, attorneys for the agency and children, and representatives for Child-Appointed Special Advocate

(CASA) attended the second meeting. Legislators from the Senate Judicial Proceedings and House Judiciary committees were invited to both meetings.

All comments were fully considered and last year's House Bill 882/Senate Bill 697 was revised. A revised copy of the proposed legislation can be found on the Judiciary website at www.courts.state.md.us/family/fccip/cinacom.html. Any questions should be directed to Althea R. Stewart Jones, Esq., FCCIP director, at 410/260-1296.

Representation Subcommittee

The Representation Subcommittee continues to plan a training for attorneys representing parties in CINA and CINA-related cases. This training program is scheduled for October 5 at the Sheraton Columbia Hotel and Conference Center in Columbia, MD. Approximately 200 child welfare attorneys have registered to attend. Questions regarding the conference should be directed to Hope Gary, FCCIP specialist at 410/260-1728.

Statistics Oversight Subcommittee

The Statistics Oversight Subcommittee continues to focus on generating reliable statistics in CINA and related TPR and adoption cases. External vendors are also working with the FCCIP to assist in gathering reliable data.

Training Subcommittee

The Training Subcommittee continues to plan for the next annual Child Abuse and Neglect Judicial Conference. The conference will center around mental health and substance abuse issues. The third day of the conference will focus on delinquency issues. For questions regarding the conference, please contact Tracy Watkins-Tribbitt, assistant director of the FCCIP at 410/ 260-1272.

[cont. on next page](#)



TPR/Permanency Planning Subcommittee



The FCCIP staff continues to focus its efforts on TPR and permanency planning. A second Notice of Funding Announcement was disseminated to the courts, local departments of social services and the Department of Human Resources. The following courts or agencies received awards:

- Circuit Court for Frederick County—Dependency Mediation Program;
- Baltimore County Department of Social Services—part-time absent parent/relative outreach worker;
- Prince George's County Department of Social Services—publication/notices in TPR cases;
- Montgomery County Department of Health and Human Services—pre-adoptive services for children and families;
- Lower shore Court-Appointed Special Advocate (CASA)—full-time volunteer coordinator at the Worcester Youth and Family Services, Inc.

The permanency planning liaisons are gathering information on the status of the TPR cases in their jurisdictions. (The processing of TPR cases and permanency planning hearings were noted as areas needing improvement in the CFSR. This information will be useful in implementing the program improvement plan, as well as the FCCIP strategic plan.

Interstate Custody Jurisdiction, cont. from p. 1

Civil Aspects of Child Abduction. In addition, the UCCJEA addresses the concerns of victims who must litigate child custody interstate by protecting against the disclosure of a victim's address, and by expanding emergency jurisdiction when a parent or child is at risk. The law also clarifies issues regarding international child custody jurisdiction, such as when and how Hague Convention orders should be enforced.

Improved Enforcement Provisions

Several innovations included in this new law improve the ability of parents to enforce custody orders across state lines. These include:

- provisions permitting the registration of an out-of-state custody determination;
- the use of temporary visitation orders;
- expedited enforcement hearings and procedural innovations to permit the immediate recovery of a child who has been removed from the state;
- warrants directing law enforcement to take immediate physical custody of a child; and
- authorization for prosecutors and other public officials to take actions to enforce the civil order.

Some of the information for this article was drawn from the following publication, which is an excellent introduction to the UCCJEA: Hoff, Patricia M. "The Uniform Child-Custody Jurisdiction and Enforcement Act," OJJDP Juvenile Justice Bulletin. U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. December, 2001. Available online at: www.ncjrs.org/pdffiles1/ojjdp/189181.pdf.

A copy of the full text of House Bill 400 can be found online at: www.mlis.state.md.us/2004rs/bills/hb/hb0400e.rtf.

Department of Family Administration

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Fathers Make a Difference, cont. from p. 2

When families come to court we try to ensure that each child has a safe, secure place to live and someone to love and care for them. That is, of course, essential. But it is, after all, a lowest common denominator. To truly focus on the best interest of the child, we must develop a family justice system that, wherever possible, helps courts ensure that children have healthy relationships with both parents. How that is translated into specific parenting plans will vary based on the specific situation of each family and the developmental needs of the child.



We can, however, hope that each parent is as healthy as possible, and that they are capable of and permitted the opportunity to develop a rich and healthy relationship with their child. Worcester County's "Nurturing Fathers" program is an example of how courts and community-based service providers can work together to support fathers so they can make that critical difference in their children's lives. (See *Worcester County's Nurturing Fathers Program*, on page 5). With programs like "Nurturing Fathers," perhaps we will be able to rewrite the rhyme:

D-A-D-D-Y
Every child needs that guy . . .
Their Daddy, yeah yeah, their Daddy.